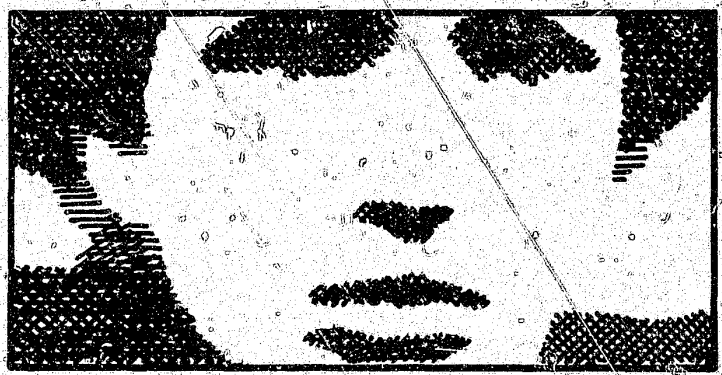
Obtaining Mental Health Treatment for



Mentally Disordered Jail Inmates & Juvenile Detainees

A Handbook for Criminal Justice and Mental Health Professionals

Obtaining Mental Health Treatment for Mentally Disordered Jail Inmates and Juvenile Detainees

A Handbook for Criminal Justice and Mental Health Professionals

State of California
Health & Welfare Agency

Department of Health
714-744 P Street
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INTRODUCTION

Most jails and juvenile detention facilities contain mentally disordered persons. A recent study of five counties found that 16% of adult jail inmates and 23.5% of juveniles in detention facilities suffered from mental disorders.[1] Left untreated, mentally ill prisoners disrupt the normal custodial routine of the jail and may decompensate to the point that long-term institutional treatment is required. The criminal or juvenile charges against them are often minor, yet contribute to the clogging of the courts.

Sections 4011.6 and 4011.8 of the Penal Code allow referral of certain mentally disordered persons from jails or detention facilities into the community mental health system.

Referral works to the advantage of all parties concerned. It enables the staff to remove a mentally disordered prisoner[2] who disturbs the jail with bizarre or aggressive behavior. It allows a mentally ill prisoner to be evaluated and receive treatment for his disorder, often in a therapeutic setting outside the jail. Finally, it relieves the workload of the courts by giving the courts and prosecuting attorney the option of dismissing criminal proceedings once the mentally disordered prisoner has received necessary mental health treatment, particularly if the offense charged is minor.

Referral is currently used successfully by many California counties, including Los Angeles County where over 700 county jail inmates are treated outside the jail annually. Many of these have all pending criminal charges against them dropped once they enter mental health treatment.

The purpose of this handbook is to facilitate referral by providing judges, attorneys, jail staff, and mental health professionals with a concise explanation of the laws authorizing referral and by answering some typical questions concerning referral. The handbook *does not* discuss laws governing persons found incompetent to stand trial, not guilty by reason of insanity, or mentally disordered sex offenders.

Since 1974 the State Department of Health has maintained a specialist in Sacramento to deal with services to mentally ill offenders. Specific questions not answered by this handbook may be directed to:

California Department of Health
Specialist for Mentally Ill Offender Services
744 P Street
Sacramento, California 95814
(916) 920-6754

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1 Arthur Bolton Associates, "A Study of the Need For and Availability of Mental Health Services for Mentally Disordered Jail Inmates and Juveniles in Detention Facilities", prepared for the California Department of Health, October 1976.

2 It must be emphasized that provisions of Section 4011.6 apply to juveniles in detention facilities as well as to jail inmates. However, in the interest of brevity, "prisoner" is used here to include both adults and juveniles, and "jail" to include juvenile detention facilities.

HISTORY OF PENAL CODE SECTIONS 4011.6 AND 4011.8[3]

Penal Code Section 4011.6 permits a judge or person in charge of the jail (jailer) to transfer a mentally disordered prisoner to a local mental health facility for evaluation and possible involuntary treatment. However, it does not authorize the judge or jailer to require *admission* to the facility. The staff at the facility can refuse to admit any prisoner who is not a danger to himself or to others, or gravely disabled, just as the staff can refuse to admit for involuntary treatment *any* person who is not dangerous to himself or others, or gravely disabled.[4]

Section 4011.6 was enacted in 1963 to permit initiation of civil commitment proceedings for mentally disordered jail inmates. Prior to that time, some local authorities believed that an inmate could not be subject to commitment unless he was first released from the status of prisoner. As originally enacted, Section 4011.6 allowed the person in charge of the jail to have a mentally ill prisoner examined by a physician in the jail. If the physician believed the prisoner to be mentally ill, the jailer could file a petition for commitment of the prisoner to a state hospital. This procedure could be completed while the prisoner remained under the custody of jail authorities.

In 1968, after passage of the Lanterman-Petris-Short Act, which ended indefinite commitment of the mentally ill, Section 4011.6 was amended to allow initiation of involuntary treatment proceedings for mentally disordered jail inmates pursuant to the provisions of the Lanterman-Petris-Short Act.

Subsequent amendments gave judges the authority to initiate referrals under Section 4011.6, required confidential reports upon referral of a prisoner, permitted jail inmates to be placed under mental health conservatorships, and made Section 4011.6 applicable to juveniles in detention facilities.

In 1975 the Legislature added Section 4011.8 to allow jail inmates to receive mental health treatment on a voluntary basis. The intent of the Legislature in enacting this section was to facilitate treatment of mentally disordered inmates who were not eligible for involuntary treatment under Section 4011.6 because they were not dangerous to themselves, dangerous to others, or gravely disabled.

Section 4011.8 requires approval of a judge or jailer if the prisoner is to receive treatment outside the jail and, unlike Section 4011.6, also requires consent of the local mental health director. Section 4011.8 is *not* applicable to juveniles in detention facilities.

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3 For a detailed legislative history, see Appendix I

4 For a definition of terms used in the Laterman-Petris-Short Act, see Appendix III.

TEXT OF PENAL CODE SECTION 4011.6

Section 4011.6 allows for referral of a mentally disordered prisoner to a mental health facility for *involuntary treatment* under the provisions of the Lanterman-Petris-Short Act.

Initiation by judge or jailer

4011.6 In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located

Mental disorder

that a person in custody in such a jail or juvenile detention facility may be mentally disordered,

Referral for evaluation

he may cause such a prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and he shall inform the facility in writing which shall be confidential, of the reasons that such person is being taken to the facility.

Examination by local mental health director

The local mental health director or his designee may examine the prisoner prior to transfer to a facility for treatment and evaluation.

Mental health provisions applicable

Thereupon, the provisions of Article 1 (commencing with Section 5150), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), and Article 7 (commencing with Section 5325) of Chapter 2 and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code shall apply to the prisoner.

Notice requirements

Where the court causes the prisoner to be transferred to a 72-hour facility, the court

shall forthwith notify the local mental health director or his designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about such transfer. Where the person in charge of the jail or juvenile detention facility causes the transfer of the prisoner to a 72-hour facility the person shall immediately notify the local mental health director or his designee and each court within the county where the prisoner has a pending proceeding about such transfer; upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about such transfer.

Confidential report to judge or jailer

If a prisoner is detained in, or remanded to, a facility pursuant to such articles of the Welfare and Institutions Code, the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement provided for in such articles, upon conversion to voluntary status, and upon filing of temporary letter of conservatorship.

Conversion to voluntary status

A prisoner who has been transferred to an inpatient facility pursuant to this section, may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facility, or the local mental health director. At the beginning of such conversion to voluntary status, the person in charge of the facility shall transmit a report to the

person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and local mental health director or his designee.

Credit for time served

If the prisoner is detained in, or remanded to, a facility pursuant to such articles of the Welfare and Institutions Code, the time passed therein shall count as part of the prisoner's sentence.

Expiration of sentence

When the prisoner is so detained or remanded, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before such expiration date, the professional person in charge shall notify the local mental health director or his designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility.

Concurrent mental health proceedings

A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court may be concurrently subject to the provisions of the Lanterman-Petris-Short Act (Division 5, Part I, Welfare and Institutions Code).

Statutory time requirements

If a prisoner is detained in a facility pursuant to such articles of the Welfare and Institutions Code and if the person in charge of such facility determines that arraignment or trial would be detrimental to the well-being of the prisoner, the time spent therein shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. Otherwise,

nothing contained herein shall affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings.

Juvenile detention facility

For purposes of this section, the term "juvenile detention facility" includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.

ANALYSIS OF PENAL CODE SECTION 4011.6

The following narrative is intended to illustrate the major provisions of Section 4011.6. A more detailed explanation, in the form of questions and answers, follows. Although the narrative concerns a jail inmate, provisions of Section 4011.6 are equally applicable to juveniles in juvenile detention facilities.

X has been arrested on a charge of disturbing the peace. He was arrested while standing on a street corner shouting bizarre and obscene comments to passersby. In jail his behavior has continued unabated and creates a disturbance by antagonizing other prisoners. The jail staff bring X's behavior to the attention of the person in charge of the jail, the jail captain.

In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility . . .

X is brought before a judge for arraignment. He continues his bizarre behavior in court.

Or to any judge of a court in the county in which the jail or juvenile detention facility is located . . .

On the basis of X's conduct, either the jail captain or the judge may conclude that X is mentally disordered. They need not be certain of their determination. They need only believe that X *may be* mentally disordered.

That a person in custody in such jail or juvenile detention facility may be mentally disordered . . .

The jail captain or judge directs a jail staff person to take X to the nearest mental health facility which has been designated by the county as a 72-hour treatment and evaluation facility. If the location of such a facility is not immediately known, it can be determined by phoning the local mental health director.

He may cause such prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code . . .

Along with X, the judge or jail captain sends a written statement of the reasons

And he shall inform the facility in writing which

X is being sent to the facility. The statement need only include a description of X's behavior and the judge or jail captain's belief that X may be mentally disordered.*

shall be confidential, of the reasons that the person is being taken to the facility.

The judge or jail captain may request the local mental health director to examine X before he is transferred to the 72-hour facility. Such an examination is not required, and the local mental health director is not obliged to perform an examination. However, some county mental health programs have established jail treatment teams to evaluate prisoners who may require treatment outside the jail or to treat prisoners inside the jail when possible.

The local mental health director or his designee may examine the prisoner prior to transfer to a facility for treatment and evaluation.

After being taken to the 72-hour facility, X is evaluated by the facility staff to determine whether he is eligible for involuntary treatment under the provisions of the Lanterman-Petris-Short Act. If the staff concludes X is, as the result of a mental disorder, a danger to others or to himself, or is gravely disabled, X may be detained for 72 hours of treatment and evaluation. He may also be held for an additional 14 days of intensive treatment if he has not recovered by the end of the initial 72 hours. If X is believed by the staff to be imminently dangerous to others, he can be held for an additional 90 days after a specified court procedure. Finally, if X is found to be gravely disabled (defined as unable to provide for his personal needs for food, clothing, or shelter), he can be placed under a one-year mental health "conservatorship" after a court hearing.

Thereupon, the provisions of Article 1 (Commencing with Section 5150), Article 4 (Commencing with Section 5250), Article 4.5 (Commencing with Section 5260), Article 5 (Commencing with Section 5275), Article 6 (Commencing with Section 5300), and Article 7 (Commencing with Section 5325) of Chapter 2 and Chapter 3 (Commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code shall apply to the prisoner.

* For sample form, see Appendix II.

If the *judge* causes X to be taken to the 72-hour facility, the judge must notify

1. the local mental health director or the person designated by the director to receive such notification ("designee").
2. the prosecuting attorney.
3. X's attorney.

Where the court causes the prisoner to be transferred to a 72-hour facility, the court shall forthwith notify the local mental health director or his designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about such transfer.

If the *jail captain* causes X to be taken to the 72-hour facility, the captain must immediately notify

1. the local mental health director or his designee.
2. each court within the county in which proceedings against X are pending.

   Each court in which proceedings are pending must then notify

   1. X's attorney.
   2. the prosecuting attorney.

   The notice may be oral or written and is intended to notify all concerned parties of X's transfer from the jail to a mental health facility.

Where the person in charge of the jail or juvenile detention facility causes the transfer of a prisoner to a 72-hour facility the person shall immediately notify the local mental health director or his designee and each court within the county where the prisoner has a pending proceeding about such transfer; upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about such transfer.

If X is admitted to the facility, the facility must send a confidential report on X's condition to

1. the judge or jailer who referred X to the facility.
2. the local mental health director or his designee.

If a prisoner is detained in, or remanded to, a facility pursuant to such articles of the Welfare and Institutions Code, the facility shall transmit a report, which shall be confidential, to the person in charge of the

If the *judge* causes X to be taken to the 72-hour facility, the judge must notify

1. the local mental health director or the person designated by the director to receive such notification ("designee").
2. the prosecuting attorney.
3. X's attorney.

Where the court causes the prisoner to be transferred to a 72-hour facility, the court shall forthwith notify the local mental health director or his designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about such transfer.

If the *jail captain* causes X to be taken to the 72-hour facility, the captain must immediately notify

1. the local mental health director or his designee.
2. each court within the county in which proceedings against X are pending.

   Each court in which proceedings are pending must then notify

   1. X's attorney.
   2. the prosecuting attorney.

   The notice may be oral or written and is intended to notify all concerned parties of X's transfer from the jail to a mental health facility.

Where the person in charge of the jail or juvenile detention facility causes the transfer of a prisoner to a 72-hour facility the person shall immediately notify the local mental health director or his designee and each court within the county where the prisoner has a pending proceeding about such transfer; upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about such transfer.

If X is admitted to the facility, the facility must send a confidential report on X's condition to

1. the judge or jailer who referred X to the facility.
2. the local mental health director or his designee.

If a prisoner is detained in, or remanded to, a facility pursuant to such articles of the Welfare and Institutions Code, the facility shall transmit a report, which shall be confidential, to the person in charge of the

A new report must be sent at the end of each period of involuntary treatment, upon X's conversion to voluntary status, and upon the filing of a temporary conservatorship over X.

If X is admitted to the facility, he may subsequently decide to accept treatment in the facility on a voluntary basis. X may do so by signing an application for admission to the facility and need not obtain the consent of the judge or jail captain who originally referred him to the 72-hour facility.

If X does convert to voluntary status, the *person in charge of the facility* must notify

1. the judge or jail captain who referred X to the facility.
2. X's attorney.
3. the prosecuting attorney.
4. the local mental health director or his designee.

jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement provided for in such articles, upon conversion to voluntary status, and upon filing of temporary letter of conservatorship.

A prisoner who has been transferred to an inpatient facility pursuant to this section, may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facility, or the local mental health director.

At the beginning of such conversion to voluntary status, the person in charge of the facility shall transmit a report to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and the local mental health director or his designee.

Any time X spends in the treatment facility will count as part of his sentence. This is true whether X is sentenced or unsentenced at the time of his referral under Section 4011.6.

If the prisoner is detained in, or remanded to, a facility pursuant to such articles of the Welfare and Institutions Code, the time spent therein shall count as part of the prisoner's sentence.

If X is a sentenced prisoner, the jail captain must notify the person in charge of the facility to which X has been referred of the expiration date of X's sentence.

When the prisoner is so detained or remanded, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence.

If the facility decides to release X prior to the expiration of X's sentence (because, for example, he is no longer a danger to himself or others, or gravely disabled, and refuses to accept treatment voluntarily), the *person in charge of the facility* must notify

1. the local mental health director or his designee.
2. X's attorney.
3. the prosecuting attorney.
4. the jail captain.

The jail captain will then return X to jail for the duration of his sentence.

If the prisoner is to be released from the facility before such expiration date, the professional person in charge shall notify the local mental health director or his designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility.

Even though criminal charges are pending against X, he may nevertheless be treated under the applicable provisions of the Lanterman-Petris-Short Act, including 72-hour evaluation, 14-day certification for intensive treatment, 90-day post-certification for imminently dangerous persons, and one-year conservatorship for gravely

A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court may be concurrently subject to the provisions of the

disabled persons. The fact that X is eligible to receive treatment for his mental disorder may lead the court or prosecutor to terminate the criminal proceedings against X.

If the court chooses not to dismiss the pending criminal proceedings, X must be arraigned and brought to trial within certain time periods. If the time requirements are not met, the court must dismiss the action against X.

However, if X is admitted to the facility and the person in charge believes that arraignment or trial would be detrimental to X's well-being, the time X spends in treatment is *not counted* for the purposes of the statutory time requirements governing arraignment and trial. Otherwise, any time spent in treatment under Section 4011.6 will be counted.

If X is a juvenile rather than an adult, the provisions of Section 4011.6 apply to him if he is being held in a state, county, or private facility in which wards or dependent children of the juvenile court, or persons awaiting hearing before the juvenile court, are detained.

Lanterman-Petris-Short Act (Division 5, Part 1, Welfare and Institutions Code).

If a prisoner is detained in a facility pursuant to such articles of the Welfare and Institutions Code and if the person in charge of the facility determines that arraignment or trial would be detrimental to the well-being of the prisoner, the time spent therein shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. Otherwise, nothing contained herein shall affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings.

For the purposes of this section, the term "juvenile detention facility" includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.

QUESTIONS AND ANSWERS REGARDING PENAL CODE SECTION 4011.6

Initiation of a PC 4011.6 Referral

Q: Can a PC 4011.6 referral be initiated by someone other than a judge or jailer?

A: Technically, no. The statute authorizes only judges and jail authorities to make a PC 4011.6 referral. However, other parties (such as a prisoner's attorney, family, or friends) may bring the prisoner's mental condition to the attention of a judge or jail authorities, who can then make a proper referral under PC 4011.6.

Q: Can the jailer delegate his authority to make referrals under PC 4011.6?

A: The statute does not explicitly authorize or prohibit such delegation of authority. In some counties, the Sheriff (who operates the county jail) delegates the authority to make referrals to a jail treatment team. Sometimes the delegation is absolute — the jail team's recommendation that a prisoner be removed from the jail under PC 4011.6 is always approved by the jail captain or commander. In other cases, the jail captain must approve the actual removal of a prisoner from the jail after considering such factors as the crime charged against the prisoner and the prisoner's propensity for escape.

Q: Can a judge or jailer refuse to allow removal of a mentally disordered inmate under PC 4011.6?

A: Yes. Even if an inmate is clearly mentally disordered (having been so diagnosed by a jail treatment team, for example), the judge or jailer may refuse to allow the prisoner to be taken from the jail. Such refusal may be based on the prisoner's propensity for violence or escape, or on the gravity of the pending charges.

Q. Can a judge order a PC 4011.6 referral for a prisoner whom the jailer has refused to release?

A: Yes. The authority of a judge to make referrals under Section 4011.6 is not contingent upon the approval of the person in charge of the jail. The statute allows either the jailer *or* any judge of the county in

which the jail is located to make a referral. The judge can exercise independent discretion as to whether a prisoner should be removed from the jail for treatment under Section 4011.6.

Q: Can mental health treatment be given to a prisoner in jail if the prisoner is not referred to a facility under PC 4011.6?

A: PC 4011.6 neither authorizes nor prohibits treatment of mentally disordered prisoners in jail (unless a unit of the jail has been designated a 72-hour treatment facility, in which case the provisions of 4011.6 apply). If a prisoner held in jail agrees to accept mental health treatment voluntarily, the prisoner may receive such treatment under the provisions of Section 4011.8. If the prisoner is unable or unwilling to consent to treatment, 4011.6 does not authorize involuntary treatment in the jail; it only authorizes referral of a mentally disordered prisoner to a 72-hour facility for evaluation and treatment.[5]

Q: Can a judge order a PC 4011.6 referral for someone who has been released on bail or on the person's own recognizance (O.R.)?

A: No. PC 4011.6 applies only to persons "in custody", which by definition excludes anyone who has been released from custody on bail or O.R. A court may impose conditions on a person who is released O.R. under the implicit grant of authority in Section 1318.4 of the Penal Code. One such condition might be that the person seek and submit to mental health treatment. However, the authority to impose mental health treatment as a condition of release O.R. is not derived from Section 4011.6.

Mental Disorder

Q: What evidence of mental disorder must a judge or jailer have before making a referral under PC 4011.6?

A: Section 4011.6 requires only that a person in custody "appear" to be mentally disordered. In most cases a prisoner's behavior will be the

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[5] At the time of writing, legislation has been introduced in the 1977-78 Session of the California Legislature which would require that prisoners retained in jail for mental health treatment give informed consent to such treatment if psychotropic drugs are to be used. If the prisoner is incapable of giving consent, the legislation requires an independent psychiatric and judicial review before medication can be used beyond a 72-hour period of emergency care. (AB 1627, Alatorre, as amended May 17, 1977).

principal evidence upon which a judge or jailer bases a determination that the prisoner may be mentally disordered. The judge or jailer may request the local mental health director or his designee to examine the prisoner in jail and determine whether the prisoner meets the criteria for involuntary treatment under the Lanterman-Petris-Short Act — dangerous to self or others, or gravely disabled. However, such examination is *not* required for referral to a 72-hour facility outside the jail.

Q: **Must the judge or jailer have "probable cause" to believe that the prisoner is a danger to others or to himself, or gravely disabled?**

A: Yes, although the statute is not explicit on this point. Section 4011.6 allows referral of a prisoner to a 72-hour facility "pursuant to Section 5150 of the Welfare and Institutions Code". Section 5150, in turn, authorizes a peace officer (or designated mental health professional) to take a person to a 72-hour facility if he has "probable cause" to believe that the person is, as a result of mental disorder, a danger to himself or others, or gravely disabled.

A judge or jailer making a referral under PC 4011.6 should follow the probable cause standard for three reasons. First, 4011.6 clearly states that referral of a jail inmate to a 72-hour facility is made "pursuant to Section 5150", and Section 5150 requires probable cause. Second, under 4011.6 the same provisions of the Lanterman-Petris-Short Act which apply to the civil population, including Section 5150, also apply to inmates referred to treatment under PC 4011.6. Finally, to use a standard for referral of a jail inmate for involuntary mental health treatment which is less strict than the standard used for referral of the general population might violate the constitutional requirement of equal protection of the law.

Referral for Evaluation

Q: **Can a prisoner be referred under PC 4011.6 to any mental health facility?**

A: No. A prisoner can only be referred to a facility which has been designated by the county and approved by the State Department of Health as a facility for 72-hour treatment and evaluation. Most 72-hour facilities are hospitals. The local mental health director or the State Department of Health can provide the location of designated 72-hour facilities within the county.

Q: Is the 72-hour facility required to admit a prisoner referred under PC 4011.6?

A: No. Section 4011.6 is simply a mechanism for transporting a prisoner to a 72-hour facility for evaluation and treatment. The staff at the facility must determine whether the prisoner is mentally disordered and meets the criteria set forth in the Lanterman-Petris-Short Act for involuntary treatment, i.e., dangerous to self or others, or gravely disabled. If the prisoner does not meet one of the three criteria he cannot be admitted to the facility unless he agrees to accept treatment voluntarily and signs a voluntary admission form. The same is true for any member of the community who is taken to a 72-hour facility for evaluation and treatment.

Therefore, a judge or jailer cannot order a prisoner admitted to the 72-hour facility under the aegis of 4011.6, but can only order a referral to the facility for evaluation.

Q: Must a written document be sent to the facility by the judge or jailer?

A: Yes. The judge or jailer must inform the facility in a confidential writing of the reasons for the prisoner's referral under 4011.6. The document need only state, for instance, that a prisoner appears to be mentally disordered because of certain behavior, and include a description of the behavior.

Examination by the Local Mental Health Director

Q: Is an examination by the local mental health director required for a PC 4011.6 referral?

A: No. As originally enacted, Section 4011.6 did require an examination by a "physician" who would determine whether the prisoner was mentally ill; after such a determination, the person in charge of the jail could file a petition for commitment of the prisoner to a state hospital. The current version of 4011.6 clearly states that the examination by the local mental health director is permissive, not mandatory. The language regarding the examination legitimizes the operation of jail treatment teams operated by some county mental health programs which screen prisoners before they are taken outside the jail to a treatment facility.

Q: Can an examination by the local mental health director take the place of the evaluation by staff at the 72-hour facility?

A: There is nothing in the statute to authorize or prohibit a county from adopting a policy that prisoners examined in the jail and found to meet the criteria for involuntary treatment will be automatically admitted to a 72-hour facility. In most counties, both the staff at the 72-hour facility and the jail treatment team are county mental health employees. As long as the prisoner is examined by mental health staff and found to be a danger to others or to himself, or gravely disabled, where the examination is performed is of no relevance to the purposes of 4011.6. The decision to adopt such a policy, however, is an administrative one and is not compelled by the language of 4011.6.

Applicable Mental Health Provisions

Q: Which provisions of the Lanterman-Petris-Short Act are applicable to prisoners referred under PC 4011.6?

A: After a prisoner has been referred to a facility under 4011.6, the following provisions of the Lanterman-Petris-Short Act apply:

Chapter 2 (commencing with Section 5150)

Article 1	Detention for Evaluation and Treatment (72 hours)
Article 4	Certification for Intensive Treatment (14 days)
Article 4.5	Subsumed under Article 4
Article 5	Judicial Review
Article 6	Post-certification for Imminently Dangerous Persons (90 days)
Article 7	Legal and Civil Rights of Involuntarily Detained Persons

Chapter 3 (commencing with Section 5350) Conservatorship for Gravely Disabled Persons (1 year)

Prior to 1975, when Chapter 3 was added to the applicable provisions, prisoners referred under PC 4011.6 could be treated for a maximum of 90 days. Now the full range of treatment provisions, including conservatorship for gravely disabled prisoners, is available. Similarly, all of the legal protections of the Lanterman-Petris-Short Act apply to prisoners who receive treatment after referral under 4011.6.[6]

Notice

Q: Who must be notified when a judge or jailer makes a PC 4011.6 referral?

A: If a *judge* makes the referral, the judge must notify the local mental health director (or his designee), the prosecuting attorney, and counsel for the prisoner. If the *jailer* makes the referral, the jailer must notify the local mental health director (or his designee) and each court of the county in which a proceeding against the prisoner is pending. *Each court* must then notify counsel for the prisoner and the prosecuting attorney.

Q: What form of notice must be given?

A: Although the statute does not specifically require written notice, it is sound policy for the court or jailer to provide a written record of the notice given.

Conversion to Voluntary Status

Q: What is meant by "conversion to voluntary status"?

A: Conversion to voluntary status occurs when a person who entered treatment involuntarily chooses to accept further treatment voluntarily. When this happens, the person generally signs a request for voluntary admission and the involuntary "hold" on the person is terminated. The Lanterman-Petris-Short Act specifically requires that treatment staff seek the agreement of an involuntary patient to accept further treatment voluntarily. This provision simply reaffirms the right of a prisoner referred for involuntary treatment to accept additional treatment voluntarily.

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6 For a summary of the applicable provisions of the Lanterman-Petris-Short Act, see Appendix III.

Q: Can a prisoner who has converted to voluntary status leave the facility at any time?

A: This depends upon the status of the criminal proceedings. If the prisoner has been *sentenced* and requests to leave the facility prior to the expiration date of the sentence, the facility must notify the jailer, who will return the prisoner to jail. If the prisoner is *unsentenced* and the criminal proceedings are still pending, the criminal court will generally issue a "court hold" on the prisoner directing that he be returned to court on a specific date for arraignment or trial. If such a prisoner chooses to terminate his voluntary treatment and requests to leave the facility, the person in charge of the facility should notify the jailer and have the prisoner returned to jail. (Alternatively, the treatment staff could reinstitute a 72-hour evaluation if the prisoner remains a danger to himself or others, or gravely disabled.)

If the prisoner has no criminal charges pending and is not under a sentence, he is, for purposes of the mental health system, no longer a prisoner at all and must be treated no differently from any other voluntary patient. A voluntary patient who requests to be released must be released unless he is eligible for involuntary treatment.

Credit for Time Spent in Treatment

Q: Must both sentenced and unsentenced prisoners be given credit for time spent in treatment after referral under PC 4011.6?

A: Yes. Sentenced prisoners clearly fall within the language of this provision. Under Section 2900.5 of the Penal Code, as amended in 1976, an unsentenced defendant who has been charged with a felony or misdemeanor must be given credit against his sentence for any time spent in "a jail, camp, work furlough facility, halfway house, rehabilitation facility, *hospital*, prison, or similar institution . . . ." (emphasis added). The broad language of Section 2900.5 would seem to cover treatment in a mental health facility so long as that treatment is given while the defendant is in custody.

Expiration of Sentence

Q: What happens to a sentenced prisoner who must be released from treatment before expiration of the sentence?

A: If a sentenced prisoner is to be released from prison before the expiration date of his sentence, the person in charge of the treatment facility must first notify

1. the local mental health director or his designee.
2. counsel for the prisoner.
3. the prosecuting attorney.
4. the person in charge of the jail.

Upon receiving such notice, the person in charge of the jail will take the prisoner from the facility and return him to jail for the duration of the sentence.

Q: Must a prisoner whose sentence expires while he is in treatment be released from treatment immediately?

A: No. If the prisoner is being treated *involuntarily*, he can be treated beyond the expiration of the sentence so long as he continues to meet the criteria for involuntary treatment. For example, if a prisoner is being treated under a 90-day post-certification when the prisoner's sentence expires, he can continue to be treated for the duration of the post-certification period. A prisoner whose sentence has expired, in short, is treated in the same manner as any other person who is held for involuntary treatment.

If, however, the prisoner is receiving treatment on a *voluntary* basis when the sentence expires, the prisoner must be released upon request unless he remains dangerous to himself or others, or gravely disabled. In this case, involuntary treatment proceedings (beginning with another 72-hour evaluation) should be reinstituted.

Concurrent Mental Health Proceedings

Q: What is meant by the statement that a prisoner "may be concurrently subject to the provisions of the Lanterman-Petris-Short Act"?

A: This language clarifies that criminal proceedings and proceedings under the Lanterman-Petris-Short Act can run simultaneously.

Q: Do criminal proceedings take precedence over mental health proceedings?

A: Yes, although this is not explicit in the statute. Section 4011.6 was never intended to preempt criminal proceedings. It is a procedure for referring mentally disordered offenders into the mental health system for treatment pending outcome of the criminal proceedings. Since the court retains jurisdiction over an unsentenced prisoner and the jailer retains jurisdiction over a sentenced prisoner, staff of the mental health treatment facility must comply with orders for return of the prisoner to court or jail.

Statutory Time Requirements

Q: Do statutory time requirements for arraignment and trial apply to prisoners referred to mental health treatment under Section 4011.6?

A: Yes, unless the person in charge of the mental health facility determines that arraignment or trial would be detrimental to the well-being of the prisoner, in which case time spent in treatment is *not counted* in any time requirements for arraignment or trial. The intent is to ensure that unsentenced prisoners referred to treatment under 4011.6 are not able to avoid pending criminal proceedings by receiving treatment which "uses up" the time requirements for arraignment and trial. Thus, any time spent in treatment after the person in charge of the mental health facility determines that arraignment or trial would be detrimental to the prisoner is not counted for the purposes of the time requirements.

It is not clear from the statute how the person in charge of the facility communicates his opinion to the court. In some counties every prisoner is sent to court for arraignment or trial and it is left to the judge to re-refer the prisoner to the facility under 4011.6 or initiate proceedings under Section 1368 of the Penal Code (incompetence to stand trial).

TEXT OF PENAL CODE SECTION 4011.8

Section 4011.8 allows a jail inmate (not a juvenile in a detention facility) to make application for *voluntary* mental health services.

Initiation by prisoner

4011.8. A person in custody who has been charged with or convicted of a criminal offense may make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003 of the Welfare and Institutions Code.

Absence from jail

If such services require absence from the jail premises, consent from the person in charge of the jail or from any judge of a court in the county in which the jail is located, and from the director of the county mental health program in which services are to be rendered, shall be obtained. The local mental health director or his designee may examine the prisoner prior to transfer from the jail.

Notice requirements

Where the court approves voluntary treatment for a jail inmate for whom criminal proceedings are pending, the court shall forthwith notify counsel for the prisoner and the prosecuting attorney about such approval. Where the person in charge of the jail approves voluntary treatment for a prisoner for whom criminal proceedings are pending, the person in charge of the jail shall immediately notify each court within the county where the prisoner has a pending proceeding about such approval; upon notification by the jailer the court shall forthwith notify the prosecuting attorney and counsel for the prisoner in the criminal proceedings about such transfer.

Credit for time served

If the prisoner voluntarily obtains treatment in a facility or is placed on outpatient treatment pursuant to Section 5003 of the Welfare and Institutions Code, the time passed therein shall count as part of the prisoner's sentence.

Expiration of sentence

When the prisoner is permitted absence from the jail for voluntary treatment, the person in charge of the jail shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before such expiration date, the professional person in charge shall notify the local mental health director or his designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail, who shall send for, take, and receive the prisoner back into the jail.

Judicial review

A denial of an application for voluntary mental health services shall be reviewable only by mandamus.

ANALYSIS OF PENAL CODE SECTION 4011.8

The following narrative is intended to illustrate the major provisions of Section 4011.8. A more detailed analysis, in the form of questions and answers, follows.

X is an inmate in county jail awaiting trial on charges of breaking and entering. He is unable to post bail and is not considered a good risk for release on his own recognizance. Because of personal problems and the jail experience, X is profoundly depressed, but is not suicidal. X tells a guard that he wants to see a psychiatrist.

A person in custody who has been charged with or convicted of a criminal offense may make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003 of the Welfare and Institutions Code.

The jail in which X is being held has an agreement with the local mental health director whereby a psychiatrist visits the jail daily to see prisoners who request or require mental health treatment. The psychiatrist examines X and determines that he should receive treatment outside the jail for his depression. Since absence from the jail is required, the psychiatrist requests approval from the jail captain or a judge to treat X in an outpatient or inpatient facility outside the jail. (If there is no such arrangement with the local mental health director, the consent of the director would have to be obtained by the judge or jailer who approves the prisoner's request for voluntary mental health services.)

If such services require absence from the jail premises, consent from the person in charge of the jail or from any judge or a court in the county in which the jail is located, and from the director of the county mental health program in which the services are to be rendered, shall be obtained. The local mental health director or his designee may examine the prisoner prior to transfer from the jail.

If the *judge* approves X's request for voluntary mental health services, the judge must notify X's counsel and the prosecuting attorney about such approval.

Where the court approves voluntary treatment for a jail inmate for whom criminal proceedings are pending, the court shall forthwith notify counsel

for the prisoner and the prosecuting attorney about such approval.

If the *jail captain* approves X's request, he must notify each court within the county in which X has a criminal proceeding pending.

Each court must then notify the prosecuting attorney and X's attorney about X's transfer to a mental health facility for voluntary treatment.

Where the person in charge of the jail approves voluntary treatment for a prisoner for whom criminal charges are pending, the person in charge of the jail shall immediately notify each court within the county where the prisoner has a pending proceeding about such approval; upon notification by the jailer the court shall forthwith notify the prosecuting attorney and counsel for the prisoner in the criminal proceedings about such transfer.

Any time which X spends in treatment under 4011.8 will be credited against his sentence. This is true even though X is unsentenced at the time he receives treatment.

If the prisoner voluntarily obtains treatment in a facility or is placed on outpatient treatment pursuant to Section 5003 of the Welfare and Institutions Code, the time passed therein shall count as part of the prisoner's sentence.

If X is a sentenced prisoner and is permitted to receive treatment outside the jail, the jail captain must notify the person in charge of the facility of the expiration date of X's sentence.

When the prisoner is permitted absence from the jail for voluntary treatment, the person in charge of the jail shall advise the professional

person in charge of the facility of the expiration date of the prisoner's sentence.

Should the facility decide to release X before the expiration of his sentence because, for example, X refuses to cooperate or has received maximum benefit from treatment, the person in charge of the facility must notify

1. the local mental health director or his designee.
2. X's attorney.
3. the prosecuting attorney.
4. the jail captain.

The jail captain must then return X to jail for the duration of his sentence.

If the prisoner is to be released from the facility before such expiration date, the professional person in charge shall notify the local mental health director or his designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail, who shall send for, take, and receive the prisoner back into the jail.

If X's request for voluntary mental health services is denied either by the jail captain or the local mental health director, X can obtain judicial review by a writ of mandate pursuant to Section 1085 et seq. of the Code of Civil Procedure.

A denial of an application for voluntary mental health services shall be reviewable only by mandamus.

QUESTIONS AND ANSWERS REGARDING PENAL CODE SECTION 4011.8

Initiation

Q: Does PC 4011.8 apply to juveniles in juvenile detention facilities?

A: No. It applies only to persons "charged with or convicted of a criminal offense".

Q: Does PC 4011.8 apply to both sentenced and unsentenced prisoners?

A: Yes.

Q: Can a prisoner receive voluntary outpatient services under 4011.8?

A: Yes, subject to the approval of the local mental health director *and* a judge or jailer. (See discussion below)

Q: Must a prisoner meet any specified criteria regarding severity of mental disorder in order to receive treatment under 4011.8?

A: No. However, there is nothing in 4011.8 which limits the authority of the local mental health director to refuse treatment to a prisoner whom the director believes is not mentally disordered.

Q: What does Section 5003 of the Welfare and Institutions Code provide?

A: Section 5003 states that nothing in the Lanterman-Petris-Short Act "shall be construed in any way as limiting the right of any person to make voluntary application at any time . . . for mental health services . . . ." Section 5003 reflects the philosophy of the Lanterman-Petris-Short Act—that people should be encouraged to accept mental health treatment voluntarily whenever possible.

Absence from Jail

Q: Who must give consent before a prisoner can receive voluntary mental health services?

A: If the treatment requires the prisoner's absence from the jail, the local mental health director and the jailer or a judge must approve the prisoner's request for treatment. Presumably, if the prisoner is to be treated in the jail, the consent of the mental health director, judge, or jailer is not required.

Examination by Local Mental Health Director

Q: Is an examination by the local mental health director required for treatment under PC 4011.8?

A: No. But if treatment requires absence from the jail, the consent of the local mental health director must be obtained. (See above)

Notice

Q: Who must be notified when a judge or jailer approves voluntary treatment for a prisoner under PC 4011.8?

A: If a *judge* approves the treatment, the judge must notify the prisoner's attorney and the prosecuting attorney. If the *jailer* approves the treatment, the jailer must notify each court within the county in which the prisoner has a pending criminal proceeding. *Each court* must then notify the prosecuting attorney and counsel for the prisoner.

Q: Do the notice requirements apply only to prisoners who are to be removed from the jail for voluntary mental health services?

A: This is unclear. The statute does not explicitly limit the requirements for notification to cases in which the prisoner is treated outside the jail. However, there is a reference to the court's responsibility to notify the prosecuting attorney and counsel for the prisoner "about such transfer," which suggests that notice is required only when the prisoner is removed from the jail. The reference may have been an unintentional carryover from the language of Section 4011.6, after which the notice requirements of 4011.8 are patterned.

In light of the ambiguity, it would be advisable for judges and jailers to provide notice whenever they approve voluntary mental health services, whether such services are to be provided inside or outside the jail.

(N.B. Some counties use 4011.8 only when a prisoner needs treatment outside the jail. Prisoners who cannot be removed from the jail but who are willing to accept treatment voluntarily are simply treated in the jail without provisions of 4011.8 being invoked. As noted in the earlier discussion of Section 4011.6 (p. 15) there is no explicit statutory authority for providing mental health services to jail inmates except under the provisions of Section 4011.6 and 4011.8.)

Q: What form of notice must be given?

A: Although the statute does not specifically require written notice, it is sound policy for the court or jailer to provide a written record of the notice given.

Credit for Time Spent in Treatment

Q: Must both sentenced and unsentenced prisoners be given credit for time spent in treatment under PC 4011.8?

A: Yes. (See discussion on page 20).

Expiration of Sentence

Q: Must voluntary mental health treatment cease when the prisoner refuses to accept further treatment?

A: Yes. Voluntary treatment cannot continue after the prisoner has expressed a desire to terminate treatment.

Q: What must a facility do with a prisoner who refuses to accept further treatment?

A: This depends on the status of the prisoner. If the prisoner is *unsentenced* and charges are still pending, he must be returned to court or jail for further criminal proceedings.

If the prisoner is *sentenced* and the sentence has not yet expired, the facility must notify the jailer, who will return the prisoner to jail.

If the prisoner's sentence has expired or the criminal proceedings have been dismissed, the prisoner must be released from the facility

when he refuses to accept further treatment unless he can be held under the involuntary treatment provisions of the Lanterman-Petris-Short Act as a danger to himself or others, or gravely disabled. A prisoner on whom the criminal "hold" has been terminated must be treated the same as any other person in the mental health system.

Judicial Review

Q: How may a prisoner obtain judicial review of a denial of voluntary mental health services?

A: If a prisoner's application for voluntary mental health services is denied, the prisoner may obtain judicial review by filing a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure. The writ can be used "to compel the admission of a party to the use and enjoyment of a right . . .to which he is entitled, and from which he has been unlawfully precluded by such inferior tribunal, corporation, board, or person."

OTHER ASPECTS OF REFERRAL – REFERRAL PRIOR TO ARREST

Although the primary focus of this handbook has been on referral of prisoners from jails and detention facilities into mental health treatment, referral can occur even before an arrest is made.

Peace officers occasionally come in contact with a person who has committed a criminal offense and who appears also to be mentally disordered. Often the person's offense is minor or grows out of a family dispute, yet an officer may feel compelled to intervene. The officer may arrest the person on the criminal violation, or he may decide to take the person to a facility for treatment and evaluation under the Lanterman-Petris-Short Act.

Section 5150 of the Welfare and Institutions Code provides a peace officer with an alternative to the immediate arrest of a mentally disordered person who has committed a crime. It allows the officer, in effect, to delay any decision to arrest a mentally disordered person until after the person has been evaluated at a 72-hour facility.

Section 5150 authorizes a peace officer to take to a 72-hour facility any person whom the officer has probable cause to believe is, as the result of a mental disorder, dangerous to himself or others, or gravely disabled.

The major provisions of Section 5150 are as follows:

1. The officer must have "probable cause" to believe that the person is, as the result of a mental disorder, a danger to others or to himself, or gravely disabled.

2. The officer must submit in writing an application stating (a) the circumstances under which the person's behavior was called to the officer's attention, and (b) that the officer has probable cause to believe the person is a danger to others or to himself, or is gravely disabled.

Staff at the 72-hour facility will examine the person to determine whether the person meets the criteria for involuntary treatment. If he meets the criteria, he will be treated according to the provisions of the Lanterman-Petris-Short Act. If the person does not meet the criteria and refuses to accept treatment voluntarily, the facility cannot detain him further.

An officer making a referral under Section 5150 may request and receive notification from the facility if the person is detained for less than the full 72 hours, provided that (a) the officer requests such notification at the time he submits the required application, and (b) the officer states in writing that the person has been referred under circumstances in which a criminal charge might be filed (Section 5152.1).

Each law enforcement agency within a county must arrange with the county mental health director a method for giving prompt notification to officers (Section 5152.2).

Sections 5152.1 and 5152.2 assure an officer that if the person cannot be held for treatment, he will be notified so that the person can be processed through the criminal justice system.

Some confusion has surrounded two amendments made to Section 5150 in 1975: substitution of "probable cause" for "reasonable cause" and deletion of the requirement that an officer's belief that the person is mentally disordered be based on the officer's "personal observation".

The substitution of "probable cause" for "reasonable cause" was intended to provide peace officers with a standard with which they are familiar, since all arrests without a warrant must be based on probable cause. The elimination of "personal observation" was intended to allow an officer who did not witness the person's behavior or act to rely on information provided by witnesses.[7]

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[7] For a discussion of the legislative intent concerning the 1975 amendments, see Final Report of the Assembly Select Committee on Mentally Disordered Criminal Offenders (1973-74), Honorable Frank Lanterman, Chairman.

APPENDIX I

Legislative History of Section 4011.6

Enacted by Stats. 1963, Chapter 1731	Allowed jailer to have prisoner examined by physician. If prisoner found to be mentally ill, permitted jailer to file petition for commitment of prisoner to state hospital.
Amended by Stats. 1968, Chapter 1374	Allowed jailer to petition for court-ordered evaluation of prisoner under provisions of Lanterman-Petris-Short Act. Permitted treatment for 72 hours, 14 days, and 90 days.
Amended by Stats. 1970, Chapter 1627	Allowed jailer to refer prisoner to facility for 72-hour evaluation and made certain provisions of LPS applicable to such prisoner.
Amended by Stats. 1971, Chapter 1117	Allowed any judge of the county in which jail is located to initiate referral under 4011.6.
Amended by Stats. 1974, Chapter 22	Required confidential report from judge or jailer of reasons for referral of prisoner under 4011.6. Also required confidential report from facility on prisoner's condition at end of each period of confinement.
Amended by Stats. 1975, Chapter 1258	Allowed establishment of conservatorships for prisoners referred under 4011.6. Required notification of specified parties upon referral under 4011.6. Allowed prisoner to convert to voluntary status.
Amended by Stats. 1976, Chapter 445	Made 4011.6 applicable to juveniles in juvenile detention facilities, as defined.

Legislative History of Section 4011.8

Enacted by Stats. 1975, Chapter 1258	Allowed prisoner to make application for voluntary mental health services.

APPENDIX II

This appendix contains sample forms which a county may wish to utilize for referrals under Penal Code Sections 4011.6 and 4011.8. The forms contain more information than is required by law, but such information has been found useful in counties which currently use Sections 4011.6 and 4011.8.

SAMPLE FORM A

This form may be used for referrals under Section 4011.6 which are initiated by the *court.*

SAMPLE FORM B

This form may be used for referrals under Section 4011.6 which are initiated by the *person in charge of the jail.*

SAMPLE FORM C

This form may be used for voluntary treatment under Section 4011.8 which requires absence from the jail. If an inmate is to receive voluntary treatment in the jail, a simple statement of consent to treatment would be sufficient.

The sample forms may be modified to suit the needs of individual counties.

SAMPLE FORM A

COURT-ORDERED
REFERRAL FOR MENTAL HEALTH EVALUATION
PURSUANT TO P.C. SECTION 4011.6

County Superior Court	Department
County Municipal Court	Division
Address	Telephone
In re: *Defendant*	Booking Number
Criminal Charge	Case Number
Prosecuting Attorney	Defense Attorney
Address	Address
Telephone	Telephone
Court where next hearing is scheduled	Date of hearing (if known)

IT IS HEREBY ORDERED that, pursuant to Section 4011.6 of the Penal Code, the above-named defendant be transported directly to the _____ (name of facility), a designated 72-hour treatment and evaluation facility, located at _____, so that such facility may determine whether defendant is, as a result of mental disorder, a danger to others or to himself, or gravely disabled pursuant to Section 5150 of the Welfare and Institutions Code.

The court has probable cause to believe that defendant is, as a result of mental disorder:

- ☐ a danger to others
- ☐ a danger to himself
- ☐ gravely disabled (unable to provide for his personal needs for food, clothing, or shelter)

The court's belief is based upon the following observed behavior and/or information received:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

INSTRUCTIONS FOR FACILITY

DEFENDANT IS A SENTENCED PRISONER ☐ Sentence expires on _____

If the facility is to release defendant prior to the expiration date of sentence, the facility SHALL NOTIFY:

a. The local mental health director or designee

Name _____

Address _____

Phone _____

b. Counsel for defendant

c. Prosecuting attorney

d. Person in charge of the jail

Name _____

Address _____

Phone _____, who shall send for, take, and receive defendant back into jail to be held there pending expiration of sentence.

If the facility is to release defendant after the expiration date of sentence, the facility may discharge defendant directly into the community.

DEFENDANT IS AN UNSENTENCED PRISONER ☐

Court in which proceedings are pending _____

☐ HOLD FOR RETURN TO CUSTODY

Case is continued to _____ (date) at _____ (time) in the above-named court.

If the facility is to release defendant before the above-mentioned date, the facility SHALL NOTIFY:

The person in charge of the jail

Name _____

Address _____

Phone _____, who shall send for, take, and receive defendant back into jail to be held there for further order of the above court.

If the person in charge of the facility determines that arraignment or trial would be detrimental to the well-being of defendant, the person in charge shall communicate his opinion to the above-named court, defendant's counsel, and the prosecuting attorney.

☐ COURT RETURN – RELEASE ON OWN RECOGNIZANCE

If the facility is to release defendant before the above-mentioned date, defendant is to be on his own recognizance and is to report to the court named above within three (3) days after release. The facility shall notify the court of defendant's release.

☐ NO COURT HOLD – DISMISSAL

The court hereby determines that defendant can be more appropriately handled according to California's civil mental health laws than in the criminal justice system. As a result of this determination and in the interest of justice, the criminal charge(s) indicated above shall be dismissed pursuant to Section 1385 of the Penal Code upon evaluation of defendant pursuant to Section 5150 of the Welfare and Institutions Code.

REPORTS

The facility shall forward a report on the condition of defendant at the end of 72-hour evaluation and each subsequent period of treatment, upon conversion to voluntary status, and upon filing of temporary letter of conservatorship to the following parties:

a. The above-named court
b. The local mental health director or designee

NOTICE

Notice of this order shall be provided to:

a. The local mental health director or designee
   Name _____
   Address _____
   Phone _____
b. Counsel for defendant
c. Prosecuting attorney

DISTRIBUTION

Original to be transmitted with defendant to facility

Dated: _____ JUDGE: _____

SAMPLE FORM B

JAIL–INITIATED
REFERRAL FOR MENTAL HEALTH EVALUATION
PURSUANT TO P.C. SECTION 4011.6

In Re: , Defendant	Booking Number
Criminal Charge	Case Number
Prosecuting Attorney	Defense Attorney
Address	Address
Phone	Phone
Court where next hearing is scheduled:	Date of hearing (if known):

I, _____ (person in charge of jail), direct that, pursuant to Section 4011.6 of the Penal Code, the above-named defendant be transported to the _____ (name of facility) located at _____, so that such facility may determine whether defendant is, as a result of mental disorder, a danger to others or to himself, or gravely disabled pursuant to Section 5150 of the Welfare and Institutions Code.

I have probable cause to believe that defendant is, as a result of mental disorder:

☐ a danger to others

☐ a danger to himself

☐ gravely disabled (unable to provide for his personal needs for food, clothing, or shelter)

My belief is based upon the following observed behavior and/or information received:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

INSTRUCTIONS FOR FACILITY

DEFENDANT IS A SENTENCED PRISONER ☐ Sentence expires on _____

If the facility is to release defendant prior to the expiration date of sentence, the facility SHALL NOTIFY:

a. The local mental health director or designee

Name _____

Address _____

Phone _____

b. Counsel for defendant

c. Prosecuting attorney

d. Person in charge of the jail

Name _____

Address _____

Phone _____, who shall send for, take, and receive defendant back into jail to be held there pending expiration of sentence.

If the facility is to release defendant after the expiration date of sentence, the facility may discharge defendant directly into the community.

DEFENDANT IS AN UNSENTENCED PRISONER ☐

Court in which proceedings are pending _____

If the facility is to release defendant, the facility SHALL NOTIFY:

a. The local mental health director or designee

Name _____

Address _____

Phone _____

b. Counsel for defendant (If unknown, send in care of court)

c. Prosecuting attorney

d. Person in charge of the jail

Name _____

Address _____

Phone _____, who shall send for, take, and receive the defendant back into the jail to be held there for further order of the above court.

REPORTS

The facility shall forward a report on the condition of defendant at the end of 72-hour evaluation and each subsequent period of treatment, upon conversion to voluntary status, and upon filing of temporary letter of conservatorship to the following parties:

a. The above-named court

b. The local mental health director or designee

NOTICE

Notice of defendant's transportation to the facility shall be provided to:

a. The local mental health director or designee

Name _____

Address _____

Phone _____

b. The above-named court and any other court within the county where defendant has a pending proceeding

DISTRIBUTION

Original to be transmitted with defendant to facility.

Dated: _____ Signed: _____
(person in charge of jail)

SAMPLE FORM C

APPLICATION FOR VOLUNTARY TREATMENT
PURSUANT TO P.C. SECTION 4011.8

In Re:	Booking Number
Criminal charge	Case Number
Prosecuting Attorney	Defense Attorney
Address	Address
Phone	Phone
Court where next hearing is scheduled	Date of next hearing (if known)

APPROVAL AND TRANSPORTATION

The local mental health director (or designee) and

The person (or designee) in charge of the jail ☐ (if initiated by the JAIL) or Judge _____

_____ (if initiated by the COURT) has approved voluntary mental health treatment for the above-named defendant at:

☐ 24-hour facility

☐ Day treatment (inpatient) facility

☐ Outpatient treatment facility

pursuant to P.C. Section 4011.8. The defendant is referred to _____ (name of facility),

located at _____.

Transportation is to be arranged as follows: ☐ Sheriff

☐ Private

☐ Public

Signed _____ (jail commander or designee) Title _____ Date _____

INSTRUCTIONS FOR FACILITY

DEFENDANT IS AN UNSENTENCED PRISONER ☐

Court in which proceedings are pending _____

If the facility is to release defendant, the facility SHALL NOTIFY:

a. The local mental health director or designee

Name _____

Address _____

Phone _____

b. Counsel for defendant (If unknown, send in care of court)

c. Prosecuting attorney

d. Person in charge of the jail

Name _____

Address _____

Phone _____ , who shall send for, take,

and receive the defendant back into the jail to be held there for further order of the above court.

DEFENDANT IS A SENTENCED PRISONER ☐

Sentence expires on _____

If the facility is to release defendant prior to the expiration date of sentence, the facility SHALL NOTIFY:

a. The local mental health director or designee

Name _____

Address _____

Phone _____

b. Counsel for defendant

c. Prosecuting attorney

d. Person in charge of the jail

Name _____

Address _____

Phone _____ , who shall send for, take,

and receive the defendant back into jail to be held there pending expiration of sentence.

SHOULD PROCEEDINGS AGAINST DEFENDANT BE DISMISSED OR DEFENDANT'S SENTENCE EXPIRE WHILE IN THE FACILITY, DEFENDANT MAY BE DISCHARGED DIRECTLY.

NOTICE REQUIRED

If treatment is approved by the PERSON IN CHARGE OF THE JAIL, notice must be sent to:

a. Each court in which proceedings against the defendant are pending

If treatment is approved by a JUDGE, notice must be given to:

a. Counsel for defendant

b. Prosecuting attorney

DISTRIBUTION

a. Original to be transmitted with defendant to facility

b. Copy to be sent to each court in which proceedings against defendant are pending

APPENDIX III

Provisions of the Lanterman-Petris-Short Act Applicable to Prisoners Referred Under PC 4011.6

The Lanterman-Petris-Short Act (LPS) ended the indeterminate judicial commitment of the mentally ill in California. The Act substituted specific criteria which must be met before a person can be treated against his will and established fixed periods of involuntary treatment ranging from 72 hours to one year.

To be held for involuntary treatment under LPS, a person must be, as the result of a mental disorder, impairment by chronic alcoholism, or addiction to narcotics, either

- A danger to others
- A danger to himself

or

- Gravely disabled

(Grave disability is defined as a condition in which a person is unable to provide for his basic personal needs for food, clothing, or shelter.[1])

The following provisions of the Act apply to prisoners referred to treatment under Section 4011.6:

Article 1 (commencing with Section 5150) **Detention for Evaluation and Treatment**

Any person referred to a mental health facility by a peace officer or designated member of an attending staff may be evaluated and treated for up to 72 hours if the treatment staff determine that the person is a danger to himself or others or gravely disabled.

If the person is *not* a danger to himself or others or gravely disabled, he must be released from the facility unless he is willing to accept treatment voluntarily.

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1 The definition of grave disability was amended in 1974 to include persons who have been found incompetent to stand trial under Section 1370 of the Penal Code and who have been charged with a crime involving harm or the threat of harm to another person. This provision affects relatively few persons.

A court hearing need not be held in order to detain a person for 72-hour evaluation and treatment.

Article 4 (commencing with Section 5250) **Certification for Intensive Treatment**

If a person held for 72 hours has not sufficiently recovered for release, remains a danger to himself or others or gravely disabled, and refuses to accept treatment voluntarily, the facility may "certify" him for up to 14 days of intensive treatment.

No court hearing is required, but the person must be informed of his right to obtain judicial review by writ of habeas corpus.

If the person has threatened or attempted suicide (either before or during treatment) and presents an imminent threat of taking his own life, he can be held for an additional 14 days, a total of 28 days beyond the 72-hour evaluation.

Article 5 (commencing with Section 5275) **Judicial Review**

Any person involuntarily detained for 14-day certification has the right to obtain a court hearing for release from treatment by writ of habeas corpus. Failure of any staff person to communicate a patient's request for release to the superior court is a misdemeanor.

Article 6 (commencing with Section 5300) **Post-Certification Procedures for Imminently Dangerous Persons**

If a person who has been treated for 14 days has threatened, attempted to inflict, or inflicted physical harm on another person (either before or during treatment) and presents an imminent threat of substantial physical harm to others, he may be treated for up to 90 days.

A hearing is required, at which the person has the right to be represented by counsel and to a jury trial. In order for the person to be held for post-certification, the jury must unanimously find that the person presents an imminent threat of substantial physical harm to others.

Article 6 (commencing with Section 5325) **Legal and Civil Rights of Persons Involuntarily Detained**

All persons involuntarily detained under the provisions of the Lanterman-Petris-Short Act are guaranteed certain legal and civil rights, including the following:

- The right to wear their own clothes and to keep personal possessions.
- The right to see visitors each day and to have access to telephones, writing materials, and stamps.
- The right to refuse convulsive therapy and psychosurgery.
- The right to have all treatment records treated confidentially.

Certain rights can be denied by the professional person in charge of the facility, but only for good cause. The right to refuse psychosurgery is absolute and cannot be overridden even for good cause.

Chapter 3 (commencing with Section 5350) **Conservatorship for Gravely Disabled Persons**

If a person is determined to be gravely disabled, the person in charge of the facility can recommend an independent investigation to determine whether a one-year conservatorship should be established for the person.

If the conservatorship investigator concurs with the treatment staff's recommendation, a hearing is held to determine whether a conservatorship should be established. At the hearing, the person may request a jury trial.

Each conservatorship expires at the end of one year. If further treatment is necessary, the conservator must petition the court to reestablish the conservatorship for another year.

The conservatee has the right to contest the existence of the conservatorship or any rights denied him under the conservatorship at any time, but not more often than once each six months.

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